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**LAW OFFICES OF**  
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Refer to File Number: 4026/20090398-SEJ  
 Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

RBS CITIZENS, N.A. SUCCESSOR IN  
 INTEREST TO CHARTER ONE BANK, .A. BY) IN ADMIRALTY  
 MERGER

Plaintiff(s),

KATHLEEN J. SPATARIU, In Personam;  
 CHARLES V. SPATARIU, In Personam; MRS)  
 JONES Vessel No. 664628 (the "Vessel"), its  
 engines, machinery, appurtenances, etc In Rem )

Defendant(s).

CASE NO.:3:09-cv-01780-JL

**(PROPOSED) ORDER APPOINTING  
 SUBSTITUTE CUSTODIAN AND  
 AUTHORIZING MOVEMENT AND  
 INSPECTION OF DEFENDANT VESSEL**

Plaintiff, RBS CITIZENS, N.A. SUCCESSOR IN INTEREST TO CHARTER ONE BANK,  
 N.A. BY MERGER by and through its attorney, STEPHEN E. JENKINS OF HEMAR, ROUSSO &  
 HEALD, LLP, having appeared, has made the following recitals, as set forth in the Application for  
 Appointment of a Substitute Custodian, and the Certification of William O'Dell , on file with the  
 Court:

1. The Complaint on file seeks relief in the prayer that the Defendant vessel MRS JONES  
 Vessel No. 664628, its engines, machinery, and appurtenances etc. ("Vessel"), be seized, condemned

1 and sold to pay plaintiff's claims and for other proper relief.

2           2.       The Court issued its Order Authorizing Issuance of a Warrant for Arrest of the Vessel  
3 on June 5, 2009. In the immediate future, the Clerk of this Court is expected to issue the Warrant for  
4 Arrest of the Vessel, commanding the United States Marshal for this District to arrest and take into  
5 custody the Vessel and to detain the same in his custody until further order of this Court respecting  
6 same.

7           3.       It is contemplated that the United States Marshal will seize the Vessel forthwith.  
8 Custody by the United States Marshal requires the services of one or more keepers at charges  
9 substantially in excess of those to be made by the proposed Substitute Custodian as set forth in the  
10 Certification of William O'Dell filed in support of Plaintiff's Application to Appoint a Substitute  
11 Custodian, not including charges for moorage and the other services usually associated with safekeeping  
12 vessels similar to the defendant vessel.

13           4.       The Vessel is currently located at Discovery Bay, docked at 1820 Surfside Ct.. Plaintiff  
14 is agreeable to allow William O'Dell of National Maritime Services, Inc. to assume the responsibility  
15 of safekeeping the Vessel, and William O'Dell of Maritime Services, Inc has consented to act as its  
16 custodian until further order of this Court. National Maritime Services, Inc has also consented to  
17 move the Vessel from their current location to a suitable marine facility, if necessary.

18           5.       National Maritime Services, Inc. by Certification of William O'Dell, its Operations  
19 Manager, submitted herewith, avers that it will provide insurance and perform the normal and  
20 customary custodial services for said vessel, including attending mooring lines, bilge pumping as  
21 necessary, and providing locks and security during their custodianship at the rates set forth in Exhibit  
22 "1" of the Certification of William O'Dell. The above monthly custodianship charge does not include  
23 moorage for the vessel. If not paid directly by Plaintiff RBS CITIZENS, N.A. SUCCESSOR IN  
24 INTEREST TO CHARTER ONE BANK, N.A. BY MERGER, the substitute custodian will  
25 additionally charge moorage at the monthly rate of \$1,428.00.

26           6.       The substitute custodian, National Maritime Services, Inc. is the beneficiary of a  
27 Certificate Of Liability Policy issued by St. Paul INS. Company, Policy No. OLO6800483m with  
28 limits of \$5,000,000 for damage sustained by third parties due to negligence committed during said

1 custody. RBS CITIZENS, N.A. SUCCESSOR IN INTEREST TO CHARTER ONE BANK, N.A. BY  
2 MERGER and the UNITED STATES MARSHALL SERVICE have been named as Additional  
3 Insured under the Insurance Policy as is evidenced by the Certificate of Insurance attached to the  
4 Certification of William O'Dell.

5 7. Further, in said certification, the Substitute Custodian accepts, in accordance with the  
6 terms of this order, possession of the Vessel, its engines, machinery and appurtenances etc., which is  
7 the subject of the action herein.

8 8. In consideration of the United States Marshal's consent to the appointment of William  
9 O'Dell of National Maritime Services, Inc as substitute custodian, plaintiff agrees to release the United  
10 States and the United States Marshal from any and all liability and responsibility arising out of care  
11 and custody of the Vessel, from the time the United States Marshal transfers possession of the Vessel  
12 over to said substitute custodian, and plaintiff further agrees to hold harmless and indemnify the  
13 United States and the United States Marshal from any and all claims whatsoever arising out of the  
14 substitute custodian's possession and safekeeping.

15  
16 THEREFORE, IT IS ORDERED that the United States Marshal for the Northern District of  
17 California is authorized, upon seizure of the Vessel, pursuant to Warrant for Arrest, to surrender the  
18 possession thereof to William O'Dell of National Maritime Services, Inc as substitute custodian named  
19 herein, and that upon such surrender the United States Marshal shall be discharged from the duties and  
20 responsibilities for the safekeeping of the Vessel and held harmless from any and all claims arising  
21 whatever out of said custodial services.

22  
23 IT IS FURTHER ORDERED that William O'Dell of National Maritime Services, Inc is  
24 appointed custodian of the Vessel and shall retain the Vessel in his custody for possession and  
25 safekeeping until further order of this Court and that National Liquidators may move the Vessel from  
26 its current location to a secure facility within the district, if necessary. All costs for such movement  
27 shall be paid by plaintiff and may, upon further order of this Court, be deemed administrative costs  
28 herein. All persons entering on board the Vessel shall execute a waiver and release in the form

1 attached hereto as Exhibit"1".

2 IT IS FURTHER ORDERED that plaintiff's attorney serve a copy of this order on the owner of  
3 the Vessel.

4 It is further requested that the Clerk of this Court deliver three certified copies of this order to  
5 the United States Marshal forthwith.

6 DATED this 16 day of June, 2009.

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JAMES LARSON  
MAGISTRATE DISTRICT JUDGE

11 Presented by:

12 HEMAR, ROUSSO & HEALD, LLP

13  
14 By: /S/ STEPHEN E. JENKINS  
15 STEPHEN E. JENKINS, ESQ., SBN 97642  
16 Attorneys for Plaintiff  
17

18 Return to Courtroom 300, 10th Floor

**EXHIBIT "1"****WAIVER OF AND RELEASE FROM LIABILITY**

Each of the undersigned, in consideration of being permitted to board the MRS JONES Vessel No, 664628, for the purposes of inspection and/or survey, does agree to and does hereby waive his/her rights whatever arising from any possible injury, illness, and /or death to him/her which may result from going onto, or off of, and being on board the vessels for such purpose.

The undersigned understands and agrees that his/her execution hereof constitutes a full release from any and all liability for any injury, illness and/or death, and all damages arising from his/her going onto, or off of, and being aboard the vessels. This release of liability extends to the benefit of:

1. U.S. Government and the U.S. Marshals Service, their agents and employees;
2. RBS CITIZENS, N.A. SUCCESSOR IN INTEREST TO CHARTER ONE BANK, N.A. BY MERGER, and its agents, employees and interested underwriters;
3. KATHLEEN J. SPATARIU and CHARLES V. SPATARIU and their agents, employees and interested underwriters;
4. Robert McKee, National Liquidators, Substitute Custodian, and its agents, employees and interested underwriters; and
5. The MRS JONES Vessel No 664628, its engines, machinery and appurtenances and its interested underwriters.

The undersigned understands and agrees that he/she shall be liable for any damage to the aforesaid vessel, including, but not limited to, its hulls, engines, machinery, appurtenances, furnishings, cargo, etc., arising out of any actions or activities of any nature undertaken by him/her in relation to his/her boarding the vessel, such liability to attach to him/her whether such actions or activities are negligent or not and whether the actions or activities of the U.S. Marshal, his keeper, the United States of America, and/or the substitute custodian are negligent or not.

The undersigned further understands and agrees that the terms and conditions of this Waiver of and Release from liability extend to and are binding upon his/her heirs, assigns, and administrators.

**I HAVE READ THE FOREGOING WAIVER OF AND RELEASE  
FROM LIABILITY AND FULLY UNDERSTAND ITS CONTENTS**

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